

AMENDED IN ASSEMBLY MAY 5, 2003

AMENDED IN ASSEMBLY FEBRUARY 11, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 91

Introduced by Assembly Member Dutton

(Principal coauthor: Senator Battin)

**(Coauthors: Assembly Members Bates, Chavez, Cogdill, Garcia,
Harman, Levine, Maze, Runner, Spitzer, and Wyland)**

(Coauthor: Senator Margett)

January 8, 2003

An act to amend ~~Section 22171~~ of Sections 22455.5, 26000, 26300, and 26400 of, and to add Sections 26000.2 and 26113.5 to, the Education Code, relating to state teachers' retirement, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 91, as amended, Dutton. State teachers' retirement: ~~spouses of members~~ part-time community college employees.

Existing law establishes the Cash Balance Benefit Program in the State Teachers' Retirement Plan as a program that school districts, community college districts, and county offices of education may provide to part-time certificated employees, as specified. Employee contributions under the Cash Balance Benefit Program are deposited in the Teachers' Retirement Fund, a continuously appropriated fund. Existing law provides that full-time classified employees of community college districts, among others are subject to coverage under the Public

Employees' Retirement System and authorizes those districts to offer that coverage to its part-time classified employees.

This bill would make part-time classified employees of community college districts, who are excluded from mandatory membership in the Public Employees' Retirement System, eligible for membership in the Cash Balance Benefit Program of the State Teachers' Retirement Plan. By expanding the class of employees who may make contributions to the Teachers' Retirement Fund, the bill would make an appropriation.

~~Under the State Teachers' Retirement System, for purposes of receiving benefits, the spouse of a member is defined as a person who was married to the member continuously for at least 12 months prior to the member's death, subject to specified exceptions.~~

~~This bill would also define a spouse to include a person who was married for less than 12 months, if the member's death was accidental, as specified.~~

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. — Section 22171 of the Education Code is~~

2 *SECTION 1. Section 22455.5 of the Education Code is*
3 *amended to read:*

4 22455.5. (a) The Legislature finds and declares that the
5 federal Omnibus Budget Reconciliation Act of 1990 (P.L.
6 101-508) requires all public employers to provide their employees
7 with either social security coverage or membership in a qualified
8 retirement plan.

9 (b) Employers shall make available criteria for membership,
10 including optional membership, in a timely manner to all persons
11 employed to perform creditable service subject to coverage by the
12 Defined Benefit Program, and shall inform part-time and
13 substitute employees *employed to perform creditable service*
14 *subject to coverage by the Defined Benefit Program*, within 30
15 days of the date of hire, or by March 1, 1995, whichever is later,
16 that they may elect membership in the plan's Defined Benefit
17 Program at any time while employed. Written acknowledgment by
18 the employee shall be maintained in employer files on a form
19 provided by this system.

(c) Employers shall be liable to the plan for employee and employer contributions and interest with respect to the Defined Benefit Program from the date of hire, or March 1, 1995, whichever is later, in addition to system administrative and audit costs, if an audit or a member's complaint reveals noncompliance. However, no employer shall be liable for employee contributions for service performed prior to January 1, 1995.

SEC. 2. Section 26000 of the Education Code is amended to read:

26000. The Legislature hereby finds and declares that the State Teachers' Retirement System Cash Balance Plan was created and established on July 1, 1996, to provide a retirement plan for persons employed to perform creditable service for less than 50 percent of the full-time equivalent for the position. The persons eligible for the Cash Balance Plan were excluded from mandatory membership in the State Teachers' Retirement System Defined Benefit Plan. Both plans are administered by the Teachers' Retirement Board. Because both plans were intended to provide for the retirement of teachers and other persons employed in connection with the public schools of this state and schools supported by this state, a merger of these two plans is now hereby made for the purpose of establishing a single retirement plan that shall be known and may be cited as the State Teachers' Retirement Plan consisting of the different benefit programs set forth in this part and Part 13 (commencing with Section 22000). The plan shall be administered by the Teachers' Retirement Board as set forth in this part and Part 13 (commencing with Section 22000). ~~As a result of this merger, a Cash Balance Benefit Program will be provided under the State Teachers' Retirement Plan and that program is set forth in this part.~~

~~The governing board of a school district, community college district, or county office of education may, by formal action, elect to provide the benefits of the Cash Balance Benefit Program under this part for their employees.~~

SEC. 3. Section 26000.2 is added to the Education Code, to read:

26000.2. (a) As a result of the merger described in Section 26000, the Cash Balance Benefit Program shall be provided under the State Teachers' Retirement Plan to provide a retirement plan for persons employed to perform creditable service who are

1 *excluded from mandatory membership in the Defined Benefit*
2 *Program and persons employed by community college district,*
3 *school district, county superintendent of schools or other*
4 *employing agency, who are excluded from mandatory membership*
5 *in the Public Employees' Retirement System. That program is set*
6 *forth in this part.*

7 *(b) The governing board of a school district, community*
8 *college district, or county superintendent of schools or other*
9 *employing agency, may, by formal action, elect to provide the*
10 *benefits of the Cash Balance Benefit Program for their eligible*
11 *employees.*

12 *SEC. 4. Section 26113.5 is added to the Education Code, to*
13 *read:*

14 *26113.5. "Creditable service," for purposes of this part only,*
15 *also means any service not described in Section 26113 that is*
16 *performed for a community college district, school district, county*
17 *superintendent of schools or other employing agency by a person*
18 *who is excluded from mandatory membership in the Public*
19 *Employees' Retirement System because he or she is serving on a*
20 *less than full-time basis.*

21 *SEC. 5. Section 26300 of the Education Code is amended to*
22 *read:*

23 *26300. (a) Within 10 working days following the ~~later~~ latest*
24 *of the first day of employment, the date of the employer's*
25 *governing board's action to provide the Cash Balance Benefit*
26 *Program, or the effective date of the employer's governing board's*
27 *action to provide the Cash Balance Benefit Program, the employer*
28 *shall make available to the employee the following information:*

29 *(1) The employee's rights and responsibilities as a participant*
30 *in the program, the employer's responsibilities under the program,*
31 *and the benefits payable under the program.*

32 *(2) The employee's right to elect membership in the Defined*
33 *Benefit Program in lieu of participation in the Cash Balance*
34 *Benefit Program, the rights and responsibilities of a member and*
35 *the employer under the Defined Benefit Program, and benefits*
36 *payable under the Defined Benefit Program. This paragraph does*
37 *not apply to an employee employed to perform creditable service*
38 *described in Section 26113.5.*

(b) Written acknowledgment by the employee that he or she has received the information specified in subdivision (a) shall be retained in the employer's files on a form prescribed by the system.

(c) If an employer's governing board's action to provide the Cash Balance Benefit Program gives employees the right to elect other coverage in lieu of the Cash Balance Benefit Program pursuant to Section 26400, the employer shall, within 10 working days following the ~~later~~ *latest* of the first day on which creditable service is performed, the date of the employer's governing board's action to provide the program or the effective date of the employer's governing board's action to provide the program, notify existing employees of the following:

(1) The employee's right to elect other coverage if offered by the employer in lieu of participation in the Cash Balance Benefit Program.

(2) The rights and responsibilities of the employer and a participant in an alternative retirement plan if offered by the employer.

(3) The benefits payable under an alternative retirement plan if offered by the employer.

SEC. 6. Section 26400 of the Education Code is amended to read:

26400. (a) A person employed to perform creditable service for less than 50 percent of the full-time equivalent for the position shall become a participant on the later of the first day on which creditable service is performed for an employer that provides the Cash Balance Benefit Program or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program, provided the person is not subject to mandatory membership in the Defined Benefit Program.

(b) If the employer's governing board's action to provide the Cash Balance Benefit Program gives employees the right to elect coverage under social security or an alternative retirement plan offered by the employer in addition to the Cash Balance Benefit Program, the employee may elect within 60 calendar days of the later of the first day on which creditable service is performed, the date of the employer's governing board's action to provide the Cash Balance Benefit Program, or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program to be covered by social security or to participate

1 in the alternative retirement plan in lieu of participating in the Cash
2 Balance Benefit Program. Any election ~~shall~~ *may* not preclude an
3 employee from participating in the Cash Balance Benefit Program
4 at a later date so long as the Cash Balance Benefit Program is
5 provided by the employer and the employee is eligible to
6 participate in the Cash Balance Benefit Program.

7 (c) If subdivision (b) is applicable, the employer shall inform
8 employees pursuant to subdivision (c) of Section 26300 of their
9 right to make an election and the election shall be made on a form
10 prescribed by the system and filed with the employer. The election
11 shall become effective on the later of the first day on which
12 creditable service is performed or the effective date of the
13 employer's governing board's action to provide the Cash Balance
14 Benefit Program.

15 (d) If the participant's basis of employment with an employer
16 that provides the Cash Balance Benefit Program changes to
17 employment to perform creditable service, *as defined in Section*
18 *26113*, for 50 percent or more of the full-time equivalent for the
19 position, contributions to the Cash Balance Benefit Program on
20 behalf of the participant shall no longer be made and creditable
21 service performed for that employer shall be subject to coverage
22 by the Defined Benefit Program as of the first day of the pay period
23 in which the change in the participant's basis of employment
24 occurred.

25 (e) *If the participant's basis of employment with an employer*
26 *that provides the Cash Balance Benefit Program changes to*
27 *employment to perform service that is subject to mandatory*
28 *membership in the Public Employees' Retirement System,*
29 *contributions to the Cash Balance Benefit Program on behalf of*
30 *the participant may no longer be made and that service performed*
31 *for the community college district shall be subject to coverage by*
32 *the Public Employees' Retirement System as of the first day of the*
33 *pay period in which the change in the participant's basis of*
34 *employment occurred.*

35 ~~amended to read:~~

36 ~~22171. (a) "Spouse" means a person who was married to the~~
37 ~~member for a continuous period beginning at least 12 months prior~~
38 ~~to the death of the member unless a child is born to the member and~~
39 ~~his or her spouse within the 12-month period or unless the spouse~~
40 ~~is carrying the member's unborn child.~~

1 ~~(b) “Spouse” also means a person who was married to the~~
2 ~~member for less than 12 months, if the member’s death was~~
3 ~~accidental, and the accident that led to the member’s death~~
4 ~~occurred after the marriage.~~

5 ~~(1) A member’s death is defined as accidental only if he or she~~
6 ~~received bodily injuries through violent, external, or accidental~~
7 ~~means and, as a direct result of the bodily injuries and independent~~
8 ~~of all other causes, died within three months after the day on which~~
9 ~~the injuries were received.~~

10 ~~(2) This subdivision does not apply if at the time of the~~
11 ~~marriage the member could not reasonably have been expected to~~
12 ~~live for 12 months, due to a known illness.~~

